

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

LINDA GONZALEZ
Plaintiff,

v.

DILLARD TEXAS SOUTH, LLC
Defendant.

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CIVIL ACTION NO. _____

DEFENDANT'S NOTICE OF REMOVAL

Defendant, Dillard Texas South, LLC ("Dillard's, LLC"), files this Notice of Removal under 28 U.S.C. §§ 1441, 1446, and 1332, and respectfully shows the Court the following:

**I.
Introduction**

1.1 On October 7, 2020, Plaintiff Linda Gonzalez filed a personal injury lawsuit against Dillard's, LLC in the 57th Judicial District Court of Bexar County, Texas, under Cause No. 2020CI19404. *Plaintiff's Original Petition, Ex. 1.* Plaintiff alleges that she suffered injuries when she tripped over an extension cord on the floor of the Dillard's, LLC department store located at 15900 La Cantera Pkwy, San Antonio, Texas 78256. *Id.* at § IV. As a result of her claimed bodily injuries, Plaintiff seeks to recover damages for: past and future mental anguish and physical pain; past and future physical impairment and physical disfigurement; and past and future medical expenses. *Id.* at § VI.

1.2 Plaintiff's state court action is one over which this Court has original jurisdiction under 28 U.S.C. § 1332 and which may be removed to this Court in accordance with 28 U.S.C. § 1441. This is a civil action in which the matter in controversy exceeds \$75,000.00, exclusive of interest and costs, and is between citizens of different states.

1.3 Service of Citation of Plaintiff's Original Petition on Defendant Dillard's, LLC was executed on October 16, 2020. *See Service of Process Transmittal, Ex. 2.* Dillard's, LLC filed its Original Answer in the state court action on November 9, 2020. *See Defendant Dillard's, LLC's Original Answer to Plaintiff's Original Petition, Ex. 3; State Court Docket Sheet, Ex. 4.*

II. The Parties

2.1 Plaintiff is a Texas citizen, who resided in Bexar County, Texas at the time of the accident at issue. *Plaintiff's Original Petition*, at § II, *Ex. 1.*

2.2 For diversity purposes, Defendant Dillard's, LLC's citizenship is determined by the citizenship of its sole member, Dillard Texas Central, LLC. *See Martin v. Boyd Racing LLC*, 2015 U.S. Dist. LEXIS 21387, *4, 2015 WL 730031 (W.D. La. February 18, 2015). Dillard Texas Central, LLC is also owned by a sole member, Dillard Texas East, LLC. Dillard Texas East, LLC is owned by a sole member, Dillard Texas Four-Point, LLC. Dillard Texas Four-Point, LLC is also owned by a sole member, Dillard Texas, LLC. Dillard Texas, LLC is owned by a sole member, DSS Uniter, LLC. DSS Uniter, LLC is owned by a sole member, Dillard Store Services, Inc. Dillard Store Services, Inc. is an Arizona corporation and has its principle place of business in Arizona. As such, Dillard South LLC will be considered an Arizona citizen for diversity purposes.

III. Procedural Requirements for Removal

3.1 Removal is timely, as this Notice is filed within 30 days of Dillard's, LLC receiving service of summons and Plaintiff's Original Petition on October 16, 2020. *See* 28 U.S.C. § 1446(b)(1).

3.2 Written notice of the filing of this Notice of Removal is being given to Plaintiff and her counsel as required by Texas law. Further, Dillard's, LLC is filing a copy of this Notice with the

Clerk of the Court for Bexar County, Texas—where Plaintiff’s cause was originally filed. *See Dillard, LLC’s Notice of Filing of Notice of Removal, Ex. 5.*

3.3 Dillard’s, LLC has submitted a copy of all processes, pleadings, and orders to this Court as required by 28 U.S.C. § 1446(a).

IV. Venue

4.1 Venue in this district is proper because the Western District of Texas, San Antonio Division, includes Bexar County. Bexar County is the county where the alleged incident occurred and where the original lawsuit is pending. *Plaintiff’s Original Petition*, at § IV.

V. Jurisdictional Basis for Removal

5.1 Removal is proper pursuant to 28 U.S.C. § 1332 because there is complete diversity between the parties and the amount in controversy exceeds \$75,000.00.

5.2 First, complete diversity of citizenship exists between the parties. Plaintiff represents that she is a Texas resident. *Plaintiff’s Original Petition*, at § II, *Ex. 1*. Dillard’s, LLC is the only named Defendant in this lawsuit. *See id.* Dillard’s, LLC’s ownership traces back to Dillard Store Services, Inc., an Arizona corporation with its principle place of business in Arizona. Dillard’s, LLC is therefore deemed a citizen of Arizona for diversity purposes. *See* 28 U.S.C. § 1332(c). For these reasons, complete diversity exists, and removal is appropriate on this ground.

5.3 Second, the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. In determining whether the amount in controversy has been met, the general rule is that the sum claimed by the plaintiff controls if the claim is apparently made in good faith. *Okeke v. Auto. Fin. Corp.*, 2016 U.S. Dist. LEXIS 196918, *16, 2016 WL 11582509 (W.D. Dist. Tex. Feb. 3, 2016) (citing *St. Paul Mercury Indemn. Co. v. Red Cab Co.*, 303 U.S. 283, 288-89, 58 S. Ct. 586, 82 L. Ed.

845 (1938)). Here, Plaintiff represents to the state Court that she seeks monetary relief over \$200,000.00 but not more than \$1,000,000.00. *Plaintiff's Original Petition*, at § VI, *Ex. 1*. As such, the amount in controversy requirement for removal is apparent on the face of Plaintiff's pleading.

**VI.
Jury Demand**

6.1 Dillard's, LLC asserts its rights under the Seventh Amendment to the U.S. Constitution and demands, in accordance with Federal Rule of Civil Procedure 38, a trial by jury on all issues.

**VII.
Prayer**

WHEREFORE, PREMISES CONSIDERED, Defendant Dillard Texas South, LLC prays that this Notice of Removal be deemed sufficient and that the proceedings attached hereto be removed from the 57th District Court of Bexar County, Texas to the docket of this Honorable Court.

Respectfully submitted,

By: 
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**ATTORNEY FOR DEFENDANT,
DILLARD TEXAS SOUTH, LLC**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing was forwarded in accordance with the Federal Rules of Civil Procedure on the 16th day of November 2020, to:

VIA E-MAIL AND E-SERVICE

Gene Toscano, Inc.
Andrew E. Toscano
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San Antonio, Texas 78201
atoscano@genetoscano.com


ROBERT A. VALADEZ